No. —

In the Supreme Court of the United States

OCTOBER TERM 1960

No. —

DONALD CLARK, PETITIONER

v.

EDMUND ZIMMERER
COMMISSIONER OF PUBLIC HEALTH
OF THE STATE OF IOWA

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

H. S. LIFE
Attorney
Oskaloosa, Iowa

INDEX

	Page
Opinion below	1
Jurisdiction	1, 2
Question presented	3
Statutes involved	2
Statement of the case	2, 3, 4
Reason for granting the writ	4, 5, 6, 7
Conclusion	7
Appendix A	8, 9
Appendix B	10, 11, 12, 13, 14
Appendix C	15, 16, 17
Appendix D	18, 19, 20, 21, 22, 23, 24, 25

CITATIONS

Cases:

Allgeyer v. Louisiana, 165 U. S. 589	4, 5
Brows v. Maryland, 12 Wheat 419	7
Foster v. Haydel, 73 Law Edition 147	7
Meyer v. Nebraska, 262 U.S. 390	4
Mugler v. Kansas, 123 U.S. 623	5
New York Ice Co. v. Liebman, 285 U.S. 262	4
Panhandle E. Pipeline Co. v. Public Service Commission, 92 Law Edition 128	7
Zimmerer v. Clark, 107 NW 2d., 726	1

Statute:

Code of Iowa, Section 153.5	2
Constitution of the United States, Amendment 14, Section 1	2, 4
Constitution of the United States, Article I, Section 8	2, 7
Constitution of the United States, Amendment 14	3

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Donald Clark petitions for a Writ of Certiorari to review the judgement of the Supreme Court of Iowa entered on February 8th, 1961, sustaining in part and reversing in part judgment of District Court of Iowa in and for Pottawattamie County.

OPINION BELOW

The Decision of The Supreme Court of Iowa is reported
North Western Reporter Vol. 107 (2d)
Page 726 Appendix D

No Petition for rehearing was made to The Supreme Court of Iowa.

On the 6th day of March, 1961, The Supreme Court of Iowa, made and entered its orler as follows;

> "It is ordered that procedendo shall not issue herein until June 8th, 1961 or until such earlier time as appellant's Petition for Certiorari is denied, upon such denial, prior to June 8th, 1961 procedendo shall issue forthwith."

JURISDICTION

The Supreme Court of Iowa entered its opinion, decree and judgment, February 8th, 1961 sustaining petitioner's right to create, manufacture and produce prosthetic devices, but denied petitioner's right to market, sell or distribute prosthetic devices, by petitioner created, manufact-

ured and produced, except only to dentists. The jurisdiction of this Court is invoked under Title 28 U.S.C 1257 (3).

QUESTION PRESENTED

Can The Supreme Court of Iowa deny to petitioner the right to market, sell and distribute direct to the public, prosthetic devices, by petitioner created, manufactured and produced when and where no statute of the State of Iowa exists, prohibiting to petitioner, such right.

STATUTE INVOLVED

The relevant provisions of the Statutes of the State of Iowa, and of the Constitution of the United States are as follows:

> "No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place, but persons who are not licensed dentists may perform laboratory work." (Code of Iowa Section 153.5)
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> "United States Constitution, Amendment Fourteen (14), Section One (1)."
>
> "The Congress shall have power to regulate commerce with foreign nations and among the several states."
>
> "United States Constitution, Article One (1), Section Eight (8)."

STATEMENT OF THE CASE

Respondent herein, as Commissioner of Public Health of State of Iowa, filed his petition in District Court of Iowa, Pottawattamie County, alleging that petitioner herein was practicing dentistry, and prays that he be enjoined therefrom. (Appendix A). Petitioner herein answered, denying that he was or had practiced dentistry, alleged that he is a

laboratory technician, duly recognized as such under the laws of the State of Iowa, and empowered to perform work and render services as a laboratory technician. That he is preforming work and rendering services as a dental laboratory technician in and under the laws of the State of Iowa. He pleads the laws of the State of Iowa, the Constitution of the State of Iowa, the laws of the United States and the Constitution of the United States as a full and complete bar to the action of the plaintiff and counterclaims, petitions for a declartory judgment, declaring his rights, (Appendix B). Trial Court granted prayer of petitioner in Trial Court, enjoined petitioner herein "either by himself or agents, in his own name or otherwise from operating a dental laboratory or in any manner engaging in the manufacture, sale dispensing or offering for sale any product, device, appliance or thing designed or to be used in the oral cavity as a replacement or artificial substitution for the natural part of any human being, commonly or professionally known as a prosthetic device, meaning to include any and all such devices whether or not specifically mentioned herein." Such Decree and Judgement of Trial Court, appealed to Supreme Court of Iowa, and following propositions, and errors of Trial Court relied on.

> "Decree of Trial Court is in violation of the Constitution of the United States and particularly Amendment Fourteen (14) of the constitution of the United States and is in violation of the public policy of the United States."
>
> "The Trial Court erred in holding that a public health question was involved in the issues of this case and the Court was without authority to find and make any determination of a public health question in this case."
>
> Opinion and judgment of Supreme Court of Iowa, (Appendix D).
>
> The Trial Court and the Supreme Court of Iowa refused to pass upon the Federal Constitution questions presented to them by this petitioner. (Appellant's Brief and Argument before Supreme Court of Iowa - Pages fourteen (14) and fifteen (15).

The federal questions sought to be reviewed here, were raised in the State Trial Court, by answer of this petitioner in

due order, and in The Supreme Court of Iowa by assignment of errors of Trial Court, by Appellate Brief and Argument.

REASONS FOR GRANTING THE WRIT

Petitioner, is a dental laboratory technician, trained under the GI Bill of Rights, after three years and seven months service in U. S. Navy and fourteen Atlantic Ocean convoy trips as Armed Guard, Merchant Marine Vessels, Second World War. He was born in Creighton, Nebraska an American citizen. His work is to construct or repair prosthetic dentures, bridges or the like, is not a professional person but a craftsman. His skill is similar to the skill of the mechanic and his work consists mainly in shaping and forming inert matter into a product suitable as a substitue of the natural teeth. He purchases much of the substances with which he works from states other than the state in which he resides and works. Artificial teeth, already fabricated in Chicago, Illinois, New York, N. Y., Omaha, Nebraska and Kansas City, Missouri, also other substances used by him from same places and transported to him by interstate common carriers. He ships his product interstate by U. S. Postal Service and common carriers. He operates interstate and intrastate. He and his contemporary craftmen make, manufacture and produce approximately ninety percent of all dental prosthetics used by the public.

The ruling of The Supreme Court of Iowa affirms and allows petitioner's right to manufacture and produce dental prosthetics and denies petitioner the right to market, sell or distribute the same, except to dentists.

The right of a person to follow a recognized and useful occupation is protected by the guaranty of liberty in our fundamental law.

> Amendment XIV to the Constitution of the United States
> Meyer vs. Nebraska, 262 U.S. 390
> Allgeyer vs. Louisiana, 165 U.S. 589

Police power of the state may not masquerade as in the interests of public health or welfare when its real purpose is to protect the interests and welfare of a specially privileged group.

New York Ice Co. vs. Liebman, 285 U.S. 262

The prohibiting of a person from selling a prosthetic by him produced, except to a dentist, is not reasonably related to the protection of public health and constitutes a deprivation of "liberty" without due process of law. A calling may not be prohibited by a decree of a Court or by a legislature unless (1) it is inherently injurious to the public health, safety or morals, or (2) has a tendency in that direction.

Mugler vs. Kansas, 123 U.S. 623.

At no place was such showing made before the Trial Court or the Supreme Court of Iowa.

The opinion of The Supreme Court of Iowa, clearly deprives petitioner of liberty. It imposes a drastic restriction upon petitioner, the free pursuit of his occupation, by denying him the right to sell his product except to dentists, and the pursuit of a calling or occupation is a part of the liberty protected by the due process clauses. (Allgeyer vs. State of Louisiana, 165 U.S. 589).

> "The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence. This right is a large ingredient in the civil liberty of the citizen. But it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it clearly does deprive him to a certain extent of his liberty. For it takes from him the freedom of adopting and following the pursuit which he prefers, which, as already intimated, is a material part of the liberty of the citizen."

It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word "liberty" as contained in the 14th Amendment. The liberty mentioned in that amendment includes the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a sucessful conclusion the purposes above mentioned. Without doubt the liberty